

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DENNIS DERISE CORBRAY,

Petitioner,

V.

JASON BENNETT, Superintendent,  
Stafford Creek Corrections Center,

### Respondent.

CASE NO. 3:24-cv-05122-TL-MLP

## ORDER ADOPTING REPORT AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”) of the  
Honorable Michelle L. Peterson, United States Magistrate Judge (Dkt. No. 5), and Petitioner  
has filed Corbray’s Objections to Report and Recommendation (Dkt. No. 7). Having reviewed the  
Petitioner’s objections, and the remaining record, the Court ADOPTS the R&R and  
RULES the objections.

A district court has jurisdiction to review a magistrate judge's report and recommendation on dispositive matters. *See Fed. R. Civ. P. 72(b)*. The district court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations

1 to which objection is made.” 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b)(3) (“The  
 2 district judge must determine de novo any part of the magistrate judge’s disposition that has been  
 3 properly objected to.”). “The district judge may accept, reject, or modify the recommended  
 4 disposition; receive further evidence; or return the matter to the magistrate judge with  
 5 instructions.” Fed. R. Civ. P. 72(b)(3); *accord* 28 U.S.C. § 636(b)(1). A party properly objects  
 6 when the party files “specific written objections” to the report and recommendation as required  
 7 under Federal Rule of Civil Procedure 72(b)(2).

8 On March 13, 2024, Petitioner filed timely objections to the R&R and raised seven  
 9 challenges:

10       1. Failure to address Petitioner’s request for certification;  
 11       2. Failure to address Petitioner’s affidavit in support of petition;  
 12       3. Failure to take judicial notice;  
 13       4. Failure to order Respondent to produce a certified copy of the  
 14       arrest warrant in this case;  
 15       5. Failure to consider whether an evidentiary hearing would  
 16       benefit a merits resolution;  
 17       6. False assertions that Petitioner’s petition is successive; and  
 18       7. Failure to address if Petitioner had an arrest warrant upon  
 19       entering Pierce County jail.

20       See Dkt. No. 7. On March 27, 2024, Petitioner filed a request to strike objections six and seven.

21       See Dkt. No. 10.<sup>1</sup>

22       Petitioner’s instant petition asserts that his current custody is unlawful because Pierce  
 23       County authorities failed to secure an arrest warrant before seizing him. *See generally* Dkt. No.  
 24       4-4. Petitioner previously filed a federal habeas petition challenging the same 2002 Pierce  
 25       County Superior Court judgment and sentence, although the arrest warrant issue was not raised.

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26       <sup>1</sup> Petitioner also filed Motion Requesting Judicial Notice (Dkt. No. 8), Petitioner’s Historical Facts in Support of  
 27       Writ of Habeas 28 USC § 2241 (Dkt. No. 9), an Errata Sheet regarding his motion requesting judicial notice (Dkt.  
 28       No. 11), and three motions requesting a Brady Order (Dkt. Nos. 12-14).

1 *See Corbray v. Carter*, No. C06-5043, Dkt. No. 1 (W.D. Wash. Jan. 18, 2006). That prior  
 2 petition was denied on the merits. *Id.*, Dkt. No. 24 (Oct. 20, 2006).

3 Therefore, a threshold issue Petitioner must overcome is whether his instant petition is  
 4 successive. *See* 28 U.S.C. § 2244. Petitioner seems to admit that his petition is successive as he  
 5 withdrew that ground for his objection. *See* Dkt. No. 10. In any event, the Court agrees with  
 6 Judge Peterson that Petitioner's petition is successive and should be dismissed.

7 For individuals such as Petitioner who are in state custody, “[n]o circuit or district judge  
 8 shall be required to entertain an application for a writ of habeas corpus to inquire into the  
 9 detention of a person pursuant to a judgment of a court of the United States if it appears that the  
 10 legality of such detention has been determined by a judge or court of the United States on a prior  
 11 application for a writ of habeas corpus.” 28 U.S.C. § 2244(a). The statute further states that:

12 A claim presented in a second or successive habeas corpus  
 13 application under [28 U.S.C. § 2254] that was not presented in a  
 prior application shall be dismissed unless—

14 (A) the applicant shows that the claim relies on a new rule  
 15 of constitutional law, made retroactive to cases on  
 16 collateral review by the Supreme Court, that was  
 previously unavailable; or

17 (B)(i) the factual predicate for the claim could not have  
 18 been discovered previously through the exercise of due  
 diligence; and

19 (ii) the facts underlying the claim, if proven and viewed in  
 20 light of the evidence as a whole, would be sufficient to  
 21 establish by clear and convincing evidence that, but for  
 22 constitutional error, no reasonable factfinder would have  
 23 found the applicant guilty of the underlying offense.

24 28 U.S.C. § 2244(b)(2). “It is now understood that a federal habeas petition is second or  
 successive if the facts underlying the claim occurred by the time of the initial petition, . . . and if  
 the petition challenges the same state court judgment as the initial petition . . . .” *Brown v. Muniz*,

889 F.3d 661, 667 (2018) (citations omitted). Here, Petitioner fails to show that his claim relies on a new rule of constitutional law that was previously unavailable or that the factual predicate for his claim could not have been discovered previously through the exercise of due diligence.<sup>2</sup>

Where a petitioner seeks to file a second or successive petition, the applicant is required to first move in the appropriate court of appeals for an order authorizing the district court to consider the application. *See* 28 U.S.C. § 2244(b)(3)(A). As Judge Peterson correctly noted in the R&R (*see* Dkt. No. 5 at 3), the Court is without jurisdiction over Petitioner’s petition, as he has failed to comply with this procedural requirement.

Accordingly, it is hereby ORDERED:

- (1) The Report and Recommendation is ADOPTED and Petitioner's objections are OVERRULED.
- (2) Petitioner's petition for writ of habeas corpus (Dkt. No. 4-1) and this action are DISMISSED pursuant to 28 U.S.C. § 2244(a), as the petition constitutes an unauthorized second or successive petition and this Court lacks jurisdiction to consider it.
- (3) In accordance with Rule 11 of the Rules Governing Section 2254 Cases, a certificate of appealability is DENIED.
- (4) Petitioner's application to proceed in forma pauperis (Dkt. No. 4) is DENIED as moot.
- (5) Petitioner's three motions for a Brady Order (Dkt. Nos. 12–14) are DENIED as moot.

<sup>2</sup> The Court does not need to reach the second prong of 28 U.S.C. § 2244(b)(2)(B), as Petitioner does not meet the first of the two requirements needed to avoid dismissal.

1 (6) The Clerk is DIRECTED to send copies of this Order to Petitioner and to the  
2 Honorable Michelle L. Peterson, United States Magistrate Judge.  
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Dated this 16th day of April 2024.

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6 Tana Lin  
7 United States District Judge  
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